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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/976,216

10/12/2001

Andrew H. Hancock

HRT-278

9525

27777

7590

07/21/2004

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EXAMINER

ROBERT, EDUARDO C

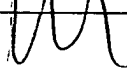
ART UNIT

PAPER NUMBER

3732

DATE MAILED: 07/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/976,216	Applicant(s) HANCOCK, ANDREW H. 	
	Examiner Eduardo C. Robert	Art Unit 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 June 2004.
 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-46 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 12-21, 23-25 and 44-46 is/are rejected.
 7) ☒ Claim(s) 22 and 26-43 is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☒ The drawing(s) filed on 12 October 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 25, 2004 has been entered.

Claim Objections

Claim 17 is a duplicate of claim 15 and applicant is advised to cancel claim 17. Claim 45 is a duplicate of claim 44 and applicant is advised to cancel claim 45. **Appropriate correction is required.**

In claim 21, line, 2, -- at least one -- should be inserted before "arm" so that the claim is more clear.

Claim 18 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Parent claim 21 positively claim at least one arm, the at least one arm having the first blade carried thereon.

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Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 44 and 45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 44, line 1, "the suture stay is substantially disposed within the cavity" is indefinite because it is unclear what applicant means by "substantially", e.g. a section, half, all, etc. It is noted that for examination purposes it would be treated as a section being disposed within the cavity.

Claim 45 is a duplicate of claim 44, thus, it has the same problems.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 12, 13, 15, 17-21, 23-25, and 44-46, as understood, are rejected under 35 U.S.C. 102(e) as being anticipated by Glines et al. (Reference U.S. Patent No. 6,190,311 cited by applicant).

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Glines et al. disclose a retractor 10 comprising first and second blades 12, 14 and a suture stay 50 removably attached to the retractor (see col. 4, lines 15-17). The first blade, e.g. 12, has a first surface and the second blade, e.g. 14, has a second surface, wherein the first surface and the second surface face away from each other and are adapted to engage tissue for retraction (see Figure 1). The retractor has an actuator for moving the first blade and the second blade relative to one another (see Figure 1). The retractor further comprises a first arm 16 and a second arm 18, wherein the first blade 12 is carried on the first arm and the second blade 14 is carried on the second arm 18 (see Figure 1). The arms have openings, e.g. 47, 49, sized to retain the suture stay in the openings. The suture stay 50 has a plurality of slots 58. The slots extend from one surface to another surface (see Figure 1) and they extend into the body, i.e. slots.

Claims 12-21, 23-25, and 44-46, as understood, are rejected under 35 U.S.C. 102(e) as being anticipated by Green, II et al. (Reference U.S. Patent 6,290,644 cited on PTO-892 mailed on February 27, 2004).

Green, II et al. disclose a retractor 10 comprising two arms (see Figure 2 below), each arm includes a cavity (see Figure 10 below). The retractor further comprises two blades, one shown in Figure 2 below. The blades are for retracting tissue. Also, a suture stay, e.g. 80 (see Figure 10 below), removably disposed within the cavity. The suture stay includes a plurality of slots on a top surface (see Figure 10 below and Figure 12). The blades are movable relative to each other, wherein one blade has a surface and the other blade has a another surface and the surfaces face away from each other so that they engage tissue (see Figure 55). The retractor comprises an actuator for moving the blades relative one another. The retractor further comprises

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a crossbeam (see Figure 2 below) and the blades are attached to the crossbeam (see Figure 2 below).

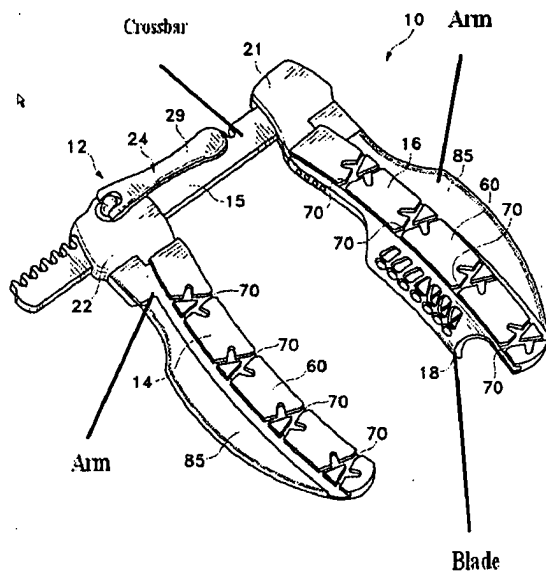


Fig. 2

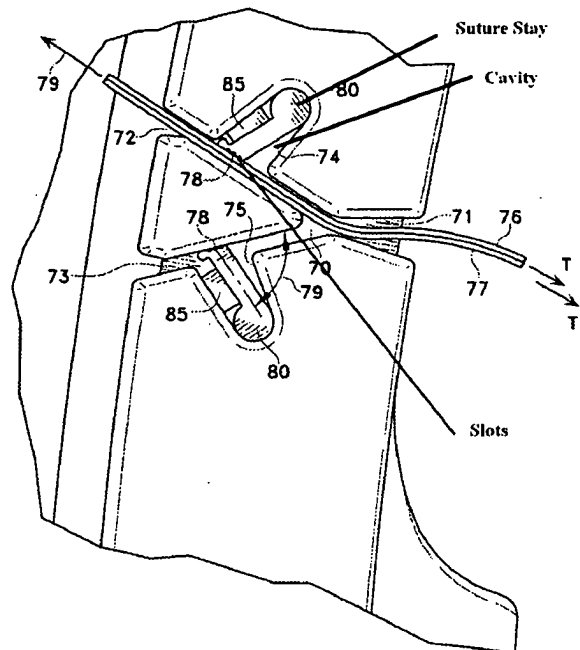


Fig. 10

The blades are carried on the arms respectively. The arms are attached to the crossbeam (see Figure 2 above). The suture stay has a body with a first surface, a second surface, and slots or grooves. The slots or grooves have the ability to perform the function of removably receive a suture therein if one so desire. The slots or grooves extend from the top surface into the body and from the first surface to the second surface, e.g. see Figure 12). The suture stay is within the cavity.

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Response to Arguments

Applicant's arguments, see Applicant's remarks on page 8, line 16 through page 10, line 7 and page 10, line 22, through page 11, line 7, filed on June 25, 2005, with respect to the double patenting rejection and the 35 U.S.C. 102 (e) rejection over Cartier et al. have been fully considered and are persuasive. The double patenting rejection and 102 (e) rejection over Cartier et al. have been withdrawn.

Applicant's arguments filed on June 25, 2005 with regard the Glines et al. patent have been fully considered but they are not persuasive.

In response to applicant's argument that Glines et al. do not teach a retractor including "at least one arm having a cavity, a first blade attached to the arm for retracting tissue, and a suture stay removably disposed within the cavity, the suture stay having at least one slot", it is noted that claim 21 does not recites what applicant is stating. Claim 21 recites:

21. (Currently Amended) ~~The retractor of claim 20,~~ A retractor, comprising at least one arm having a cavity, a first blade attached to the arm for retracting tissue, and a suture stay removably disposed at least partially within the cavity, wherein the suture stay having at least one slot~~as a plurality of slots.~~

and Glines et al. clearly disclose a retractor having at least one arm, e.g. 16 or 18, having a cavity, e.g. 47 or 49, a first blade, e.g. 12 or 14, attached to the at least one arm, e.g. 16 or 18, for retracting tissue, and a suture stay 50, i.e. a body having a retention structure on the body for retaining the body on the arm and having channels to removably receive a suture therein (see for example applicant's specification page 4, lines 12-15, of what a suture stay may be), removably disposed "at least partially" within the cavity. It is noted that even applicant agrees that the

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suture stay 50 is disposed "at least partially" within the cavity (see applicant's remarks, page 10, lines 16. The suture stay has a plurality of slots 58, i.e. suture grips.

In response to applicant's argument that "the suture grips 58 are not taught as being disposed within the opening 47 or 49", it is noted that this is irrelevant since applicant is not claiming a "slot" within the cavity.

Allowable Subject Matter

Claims 22 and 26-43 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eduardo C. Robert whose telephone number is 703-305-7333. The examiner can normally be reached on Monday-Friday, 9:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on 703-308-2582. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eduardo C. Robert
Primary Examiner
Art Unit 3732

E.C.R.